

Assembly Bill No. 1881

CHAPTER 324

An act to amend Sections 1600.5, 1607, and 2972 of, and to add Section 2972.1 to, the Penal Code, relating to mentally disordered offenders.

[Approved by Governor September 5, 2000. Filed
with Secretary of State September 7, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1881, Gallegos. Mentally disordered offenders.

(1) Existing law authorizes the placement on outpatient status of persons convicted of a crime and committed to a state hospital or other treatment facility under specified provisions of law. Time spent on outpatient status pursuant to these provisions is not counted as actual custody and is not credited toward the person's maximum term of imprisonment.

(2) Existing law also requires the community program director of the treatment facility where a person is committed for treatment, to submit to the medical director of a state hospital and to the court, when appropriate, the opinion of the outpatient supervisor that a committed person has regained competence as specified.

This bill would include persons committed to a treatment facility as a mentally disordered prisoner as specified in the above 2 provisions.

(3) Existing law authorizes as a condition of parole, the treatment of a prisoner who has a severe mental disorder, as defined, that is not in remission, as defined, or cannot be kept in remission without treatment. Treatment includes inpatient and outpatient status.

This bill would provide that outpatient status be for a period not to exceed one year and would establish a procedure, after notice and a hearing, to either discharge the person, order the person confined to a treatment facility, or continue the person on outpatient status. The community program director or designee would be required to furnish a report and recommendation to the court and the parties. Upon receipt by the court of a related specified report that recommends confinement or continued outpatient treatment, the court shall direct that person's prior defense counsel to meet and confer with that person to explain the recommendation contained therein. The bill would also direct the court to appoint new counsel for this purpose, if necessary. The bill would provide that after this meeting, both defense counsel and the person on outpatient status shall sign a specified form concerning the person's decision whether to challenge the recommendation and proceed to a jury trial, which

shall be returned to the court at least 10 days prior to the described hearing. The bill would also provide for the person's counsel to sign the form on his or her behalf if he or she refuses or is unable to do so, as specified. The bill would require that a jury trial be set for hearing within 60 days of the initial hearing if the person either requests a jury trial or fails to waive his or her right to a jury trial. This bill would also provide that its provisions not be construed to extend the maximum period of parole of a mentally disordered offender. By expanding the grounds for release from commitment to a treatment facility, this bill would increase the duties of local officials and would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1600.5 of the Penal Code is amended to read:

1600.5. For a person committed as a mentally disordered sex offender under former Section 6316 or 6316.2 of the Welfare and Institutions Code, or committed pursuant to Section 1026 or 1026.5, or committed pursuant to Section 2972, who is placed on outpatient status under the provisions of this title, time spent on outpatient status, except when placed in a locked facility at the direction of the outpatient supervisor, shall not count as actual custody and shall not be credited toward the person's maximum term of commitment or toward the person's term of extended commitment. Nothing in this section shall be construed to extend the maximum period of parole of a mentally disordered offender.

SEC. 2. Section 1607 of the Penal Code is amended to read:

1607. If the outpatient supervisor is of the opinion that the person has regained competence to stand trial, or is no longer insane, is no longer a mentally disordered offender, or is no longer a mentally disordered sex offender, the community program director shall submit his or her opinion to the medical director of the state hospital, where appropriate, and to the court which shall calendar the case for further proceedings under the provisions of Section 1372, 1026.2, or 2972 of this code or Section 6325 of the Welfare and Institutions Code.

SEC. 3. Section 2972 of the Penal Code is amended to read:



2972. (a) The court shall conduct a hearing on the petition under Section 2970 for continued treatment. The court shall advise the person of his or her right to be represented by an attorney and of the right to a jury trial. The attorney for the person shall be given a copy of the petition, and any supporting documents. The hearing shall be a civil hearing, however, in order to reduce costs the rules of criminal discovery, as well as civil discovery, shall be applicable.

The standard of proof under this section shall be proof beyond a reasonable doubt, and if the trial is by jury, the jury shall be unanimous in its verdict. The trial shall be by jury unless waived by both the person and the district attorney. The trial shall commence no later than 30 calendar days prior to the time the person would otherwise have been released, unless the time is waived by the person or unless good cause is shown.

(b) The person shall be represented by the district attorney. If the person is indigent, the county public defender shall be appointed.

(c) If the court or jury finds that the patient has a severe mental disorder, that the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and that by reason of his or her severe mental disorder, the patient represents a substantial danger of physical harm to others, the court shall order the patient recommitted to the facility in which the patient was confined at the time the petition was filed, or recommitted to the outpatient program in which he or she was being treated at the time the petition was filed, or committed to the State Department of Mental Health if the person was in prison. The commitment shall be for a period of one year from the date of termination of parole or a previous commitment or the scheduled date of release from prison as specified in Section 2970. Time spent on outpatient status, except when placed in a locked facility at the direction of the outpatient supervisor, shall not count as actual custody and shall not be credited toward the person's maximum term of commitment or toward the person's term of extended commitment.

(d) A person shall be released on outpatient status if the committing court finds that there is reasonable cause to believe that the committed person can be safely and effectively treated on an outpatient basis. Except as provided in this subdivision, the provisions of Title 15 (commencing with Section 1600) of Part 2, shall apply to persons placed on outpatient status pursuant to this paragraph. The standard for revocation under Section 1609 shall be that the person cannot be safely and effectively treated on an outpatient basis.

(e) Prior to the termination of a commitment under this section, a petition for recommitment may be filed to determine whether the patient's severe mental disorder is not in remission or cannot be kept in remission without treatment, and whether by reason of his or her severe mental disorder, the patient represents a substantial danger

of physical harm to others. The recommitment proceeding shall be conducted in accordance with the provisions of this section.

(f) Any commitment under this article places an affirmative obligation on the treatment facility to provide treatment for the underlying causes of the person's mental disorder.

(g) Except as provided in this subdivision, the person committed shall be considered to be an involuntary mental health patient and he or she shall be entitled to those rights set forth in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code. Commencing January 1, 1986, the State Department of Mental Health may adopt regulations to modify those rights as is necessary in order to provide for the reasonable security of the inpatient facility in which the patient is being held. This subdivision and the regulations adopted pursuant thereto shall become operative on January 1, 1987, except that regulations may be adopted prior to that date.

SEC. 4. Section 2972.1 is added to the Penal Code, to read:

2972.1. (a) Outpatient status for persons committed pursuant to Section 2972 shall be for a period not to exceed one year. Pursuant to Section 1606, at the end of a period of outpatient status approved by the court, the court shall, after actual notice to the prosecutor, the defense attorney, the community program director or a designee, the medical director of the facility that is treating the person, and the person on outpatient status, and after a hearing in court, either discharge the person from commitment under appropriate provisions of law, order the person confined to a treatment facility, or renew its approval of outpatient status.

(b) Prior to the hearing described in subdivision (a), the community program director or a designee shall furnish a report and recommendation to the court, the prosecution, the defense attorney, the medical director of the facility that is treating the person, and the person on outpatient status. If the recommendation is that the person continue on outpatient status or be confined to a treatment facility, the report shall also contain a statement that conforms with requirements of subdivision (c).

(c) (1) Upon receipt of a report prepared pursuant to Section 1606 that recommends confinement or continued outpatient treatment, the court shall direct prior defense counsel, or, if necessary, appoint new defense counsel, to meet and confer with the person who is on outpatient status and explain the recommendation contained therein. Following this meeting, both defense counsel and the person on outpatient status shall sign and return to the court a form which shall read as follows:

“Check One:



“_____ I do not believe that I need further treatment and I demand a jury trial to decide this question.

“_____ I accept the recommendation that I continue treatment.”

(2) The signed form shall be returned to the court at least 10 days prior to the hearing described in subdivision (a). If the person on outpatient status refuses or is unable to sign the form, his or her counsel shall indicate, in writing, that the form and the report prepared pursuant to Section 1606 were explained to the person and the person refused or was unable to sign the form.

(d) If the person on outpatient status either requests a jury trial or fails to waive his or her right to a jury trial, a jury trial meeting all of the requirements of Section 2972 shall be set within 60 days of the initial hearing.

(e) The trier of fact, or the court if trial is waived, shall determine whether or not the requirements of subdivisions (c) and (d) of Section 2972 have been met. The court shall then make an appropriate disposition under subdivision (a) of this section.

(f) The court shall notify the community program director or a designee, the person on outpatient status, and the medical director or person in charge of the facility providing treatment of the person whether or not the person was found suitable for release.

SEC. 5. Nothing in this act shall be construed to extend the maximum period of parole of a mentally disordered offender.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

